

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7628

Joint Petition of Green Mountain Power)
Corporation, Vermont Electric Cooperative, Inc.,)
and Vermont Electric Power Company, Inc. for a)
certificate of public good, pursuant to 30 V.S.A.)
Section 248, to construct up to a 63 MW wind)
electric generation facility and associated facilities)
on Lowell Mountain in Lowell, Vermont, and the)
installation or upgrade of approximately 16.9)
miles of transmission line and associated)
substations in Lowell, Westfield and Jay, Vermont)

Order entered: 8/5/2010

PROTECTIVE ORDER REGARDING PREFILED TESTIMONY

I. INTRODUCTION

On May 21, 2010, Green Mountain Power Corporation ("GMP") filed a Motion for Confidential Treatment of Prefiled evidence concerning certain prefiled testimony and related exhibits of GMP witness Douglas Smith. Specifically, GMP states that the prefiled testimony and exhibits contain confidential information that is competitively sensitive and should be maintained as confidential. GMP submitted an averment to support its request for confidentiality.

No other party opposed GMP's motion or filed comment.

II. DISCUSSION

We have reviewed the motion and supporting materials, and we conclude that GMP has made a *prima facie* showing that confidential treatment is warranted for the information at issue. Therefore, we hereby grant GMP's motion for a protective order.

To promote full public understanding of the basis for its decisions, this Board has actively taken steps to limit the amount of information subject to protective orders. We have encouraged parties to remove material from that protection to the extent possible. Since 2001, we have

required petitioners seeking a protective order to submit a document-specific (or information-specific) averment of the basis for keeping confidential any document (or information) that they wish to be kept under seal. This arrangement appropriately places a heavy burden on the party seeking confidentiality to justify that decision. It also ensures that counsel for the party seeking confidentiality has actually reviewed and considered the relevant confidentiality factors, as they relate to the specific document or information at issue.¹ Generally, however, we only resolve disputes about information when there is a genuine disagreement about its confidential nature.²

In determining whether to protect confidential information, we consider three issues:

- (1) Is the matter sought to be protected a trade secret or other confidential research, development, or commercial information which should be protected?
- (2) Would disclosure of such information cause a cognizable harm sufficient to warrant a protective order?
- (3) Has the party seeking protection shown "good cause" for invoking the Board's protection?³

GMP asserts that the testimony and exhibits should be kept confidential for the following reasons:

- The testimony and exhibits contain information on GMP's market view, forecasts and other competitively sensitive information;
- Release of the information would harm GMP's ability to negotiate agreements for the purchase of power, to participate in the markets for energy, capacity, renewable energy credits and other power products, and manage its risks related to the same;
- In certain instances, GMP is contractually required to keep the information confidential.

We have reviewed the motion and supporting materials, and we have applied the existing standard. We conclude that the redacted information is commercially sensitive information that should be protected, that disclosure would cause a cognizable harm sufficient to warrant a protective order, and that there is good cause for protecting the information. Therefore, GMP has

1. *Investigation into General Order No. 45 Notice filed by Vermont Yankee Nuclear Power Corporation re: proposed sale of Vermont Yankee Nuclear Power Station to Entergy Nuclear Vermont Yankee, LLC*, Docket No. 6545 ("*Entergy Docket*"), Order of 11/9/01 at 5-6.

2. *Id.* at 6.

3. See e.g., *Entergy Docket*, Order of 3/29/02 at 2.

made a *prima facie* showing that confidential treatment is warranted for the information at issue, and we grant GMP's motion for a protective order.

In addition, we have consistently reminded parties who seek confidential treatment for materials that they have a continuing obligation to reexamine protected information and to release material that would not cause competitive harm, or that has otherwise been made public (even during the course of this proceeding), particularly testimony and exhibits. We expect GMP to do the same here. At this time, we are not explicitly ruling that any specific information should remain confidential indefinitely. Parties retain the ability to challenge whether information encompassed by this ruling should be removed from the special protections we adopt in this Order or removed completely from protection as confidential information.

III. ORDER

Therefore, IT IS HEREBY ORDERED that the Confidential Information provided by GMP (as set out in an attachment to this Order) shall be treated in this proceeding as follows:

1. All testimony, affidavits, transcripts, exhibits, and other documents that are subject to this Order as confidential information, and any documents that discuss or reveal documents that constitute confidential material, shall be placed in a sealed record by filing such information in sealed envelopes or other appropriate sealed containers on which shall be endorsed the caption and docket number of the proceeding, the nature of the content (*e.g.*, exhibit, report, etc.), and a statement that it shall not be opened or released from the custody of the Clerk of the Board except by Order of the Board. Notwithstanding such a statement, the members of the Board, any employee or consultant specifically authorized by the Board to assist the Board in this proceeding, and any Hearing Officer appointed to this Docket may have access to such sealed confidential information, but shall not disclose such information to any person.

2. At any hearing or conference in this proceeding, no persons, other than those who have signed or agreed to be bound by this Order and any Protective Agreement approved in this Docket, and those whom the Board has expressly authorized to have access to this confidential information, shall be permitted to give, hear or review testimony given or held with respect to this confidential information.

3. Each Board stenographer or reporter in this proceeding shall acknowledge and be bound by this Order. Each such Board stenographer or reporter shall be instructed to and shall start a separate transcription for testimony or discussion on the record of confidential information. Such transcription shall be marked "Confidential" and shall be sealed and filed with the Clerk of the Board, and copies of the same shall be made available only to those persons authorized to view such information. Such transcription shall, in all other respects, be treated as confidential information pursuant to this Order.

4. The Board retains jurisdiction to make such amendment, modifications and additions to this Order as it may, from time to time, deem appropriate, including any such amendments, modifications or additions resulting from a motion made pursuant to the Protective Agreement. Any party or other person may apply to the Board for an amendment, modification or addition of this Order.

Dated at Montpelier, Vermont, this 5th day of August, 2010.

<u>s/ James Volz</u>)	
)	PUBLIC SERVICE
)	
<u>s/ David C. Coen</u>)	BOARD
)	
)	OF VERMONT
<u>s/ John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: August 5, 2010

ATTEST: s/ Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)

Witness	Page, Line No. or Exhibit No.	Subject/Description	Averment
Douglas Smith	Exh. Pet.-DCS-5-CONFIDENTIAL	Market Price Outlook (2010\$)	No. 1
Douglas Smith	Exh. Pet.-DCS-6-CONFIDENTIAL	Market Price Outlook (nominal \$)	No. 1
Douglas Smith	Exh. Pet.-DCS-7-CONFIDENTIAL	Recent Market Price Forecasts	No. 1
Douglas Smith	Exh. Pet.-DCS-8-CONFIDENTIAL	Capacity Price Forecast	No. 1
Douglas Smith	Exh. Pet.-DCS-9-CONFIDENTIAL	Summary of Renewables Proposals	No. 1
Douglas Smith	Exh. Pet.-DCS-10-CONFIDENTIAL	KCW Cost v. GMP Market Outlook	No. 1
Douglas Smith	Page 11, lines 2,4	Vermont Load Zone Price Forecast	No. 1
Douglas Smith	Page 11, lines 8, 9, 10	Natural Gas Price Assumptions	No. 1
Douglas Smith	Page 12, lines 1, 2	CO2 Price Assumptions	No. 1
Douglas Smith	Page 13, lines 5, 6, 12, 15, 16, 19, 20, 21	LaCapra/SEA Forecast Adjustments	No. 1
Douglas Smith	Page 17, lines 7-9	Granite Reliable Price Information	No. 1
Douglas Smith	Page 22, lines 17-18	KCW Levelized Market Value	No. 1
Douglas Smith	Page 23, line 5	Intermittance Discount to Project Value	No. 1
Douglas Smith	Page 32, line 6	Intermittance Discount to Project Value	No. 1